

### **REMARKS**

Claims 1-23 and 27-40 are currently pending in the subject application and are presently under consideration. Claim 21 has been amended as shown on pp. 4 of the Reply to correct a typographical error.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

#### **I. Rejection of Claims 1-23 and 27-40 Under 35 U.S.C. §103(a)**

Claims 1-23 and 27-40 stand rejected under 35 U.S.C. 103(a) as obvious over SoftWire (SW) Graphical Programming as taught in (US Patent # 6,425,121) in view of Visual Basic 6 (VB) as documented in Rob Thayer's text book Visual Basic Unleashed (September 11, 1998) in further view of Template Software's Workflow system Chapter 9 from 1998 and in further view of Thompson et al (US Patent # 6,810,401).

Claim 1 recites, "providing a plurality of nodes and a directory of applications, each of an application being created by use of at least a portion of the plurality of selecting at least a portion of the plurality of nodes; selecting at least a portion of plurality of nodes to create a selected node layout that represent a plurality of application logics; *executing the selected node layout by a server program*; visually showing the selected node layout as a visual node layout; monitoring a flow of control through each node in the node layout during execution by showing individual node execution measurement; wherein the individual node execution measurements include usage totals, whole execution time and average execution time; and employing a solution engine that uses networked objects to follow and manage user sessions, wherein the solution engine interfaces with an observation, personalization and pricing engine as directed by specific nodes."

SW teaches a GUI 400 having several elements and a toolbox that is used by the developer in creating applications since they call upon class factories that allocate memory for objects (column 7, lines 2-25). Furthermore, SW teaches the software detects forks or branches disposed within a flow diagram (column 4, lines 2-23) and can be used to construct a program that obtains indoor and outdoor temperature measurements (column 22, lines 13-33; Figure 9); SW's connection scheme is created and measurements are sent to the software from measuring devices such as indoor/outdoor thermometers sending temperature measurements to the software located on a computer that monitors the temperature readings. As a result, SW's disclosure,

which discusses creating software that monitors activities of a system by interconnecting a variety of measuring devices (figure 9) does not read on, “*executing the selected node layout by a server program*” (emphasis added) as recited in the claims.

VB discloses a client takes a value a user enters and sends it to the server application that use it to look up the price in a database (pages 547-549), which does not read on, “*executing the selected node layout by a server program*” (emphasis added) as recited in the claims. VB is referring to a client searching for an item using a search engine and does not disclose any node layout.

Template Software’s Workflow system Chapter 9 of the 1998 Book (hereinafter “WFT”) teaches simulation node examples that requests the next available work item for processing for repetitive requesting (page 8-10). Also, WFT teaches a topology indicating the meanings of all the display elements between servers and nodes (pages 9-54 and 9-55), which does not read on, “*executing the selected node layout by a server program*” (emphasis added) as recited by the claims.

Thompson teaches a pricing engine that uses data from frame engine to generate prices (column 8, lines 8-25) and a user answering questions and an expert system determines the attributes for some other options (column 4, lines 30-42; figure 27 and figure 5), which does not read on, “*executing the selected node layout by a server program*” as recited by the claims. As a result, SW in view of VB in further view of WFT in further view of Thompson does not teach, “*executing the selected node layout by a server program*” (emphasis added) as recited in the claimed invention.

In addition, the Office Action is based on a combination of 4 references. As a result, with the addition of each reference, the Office Action should state a motivation with the addition of each reference. The Office Action does not recite a motivation for combining SW and VB. Rather, the Office Action omits the motivation for combining SW and VB. Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. *See KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) citing *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“[R]ejections on

*obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).*

In addition, the Office Action does not recite a motivation for combining SW in view of VB and in further view of Template. Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. *See KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) *citing In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“*[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).*

Under 35 U.S.C. 103 where the examiner has relied on the teachings of several references, the test is whether or not the references viewed individually and collectively would have suggested the claimed invention to the person possessing ordinary skill in the art. It is to be noted, however, that citing references which merely indicated that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. That is to say, there should be something in the reference or a convincing line of reasoning in the answer suggesting the desirability of combining the references in such a manner as to arrive at the claimed invention... [I]t would not have been obvious to modify the reference ... without using the patent application's] claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness.” *Ex parte Hiyamizu*, 10 USPQ2d 1393 (BPAI 1988).

In addition, the Office Action does not recite a motivation for combining SW in view of VB in further view of Template and in further view of Thompson. Although the Office Action recites the combination of references is SW in view of VB in further view of Template and in further view of Thompson, the Office Action unusually recites “the combination of Thompson and Template,” thereby reversing the order of the combination. The Office Action states, “Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

invention to combine the teachings of rapid development system of SW and VB with the statistical abilities of Template with the ability to perform automated configuration...based on usage.” Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. *See KSR v. Teleflex*, 550 U.S. \_\_\_, 127 S. Ct. 1727 (2007) citing *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“***[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness***”).

Under 35 U.S.C. 103 where the examiner has relied on the teachings of several references, the test is whether or not the references viewed individually and collectively would have suggested the claimed invention to the person possessing ordinary skill in the art. It is to be noted, however, that citing references which merely indicated that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious. That is to say, there should be something in the reference or a convincing line of reasoning in the answer suggesting the desirability of combining the references in such a manner as to arrive at the claimed invention... [I]t would not have been obvious to modify the reference ... without using the patent application’s] claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness.” *Ex parte Hiyamizu*, 10 USPQ2d 1393 (BPAI 1988).

Therefore, it is respectfully suggested that claim 1 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of Thompson. For at least the same reasons, it is respectfully requested that the rejection of claim 1 be withdrawn and claim 1 allowed.

Dependent claims 2-22 are patentable for at least the same reasons as claim 1 is patentable. Therefore, it is respectfully suggested that claims 2-22 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of

Thompson. For at least the same reasons, it is respectfully requested that the rejection of claims 2-22 be withdrawn and claims 2-22 allowed.

Claim 23 is patentable for at least the same reasons as claim 1 is patentable. Therefore, it is respectfully suggested that claim 23 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of Thompson. For at least the same reasons, it is respectfully requested that the rejection of claim 23 be withdrawn and claim 23 allowed.

Dependent claims 27-35 are patentable for at least the same reasons as claim 23 is patentable. Therefore, it is respectfully suggested that claims 27-35 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of Thompson. For at least the same reasons, it is respectfully requested that the rejection of claims 27-35 be withdrawn and claims 27-35 allowed.

Claim 36 is patentable for at least the same reasons as claim 1 is patentable. Therefore, it is respectfully suggested that claim 36 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of Thompson. For at least the same reasons, it is respectfully requested that the rejection of claim 36 be withdrawn and claim 36 allowed.

Dependent claims 37-40 are patentable for at least the same reasons as claim 36 is patentable. Therefore, it is respectfully suggested that claims 37-40 patentably defines over the combination of SW in view of VB in further view of Template, and in further view of Thompson. For at least the same reasons, it is respectfully requested that the rejection of claims 37-40 be withdrawn and claims 37-40 allowed.

**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [FOPS102USB].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Reg. No. 40,894

AMIN, TUROCY & CALVIN, LLP  
24<sup>TH</sup> Floor, National City Center  
1900 E. 9<sup>TH</sup> Street  
Cleveland, Ohio 44114  
Telephone (216) 696-8730  
Facsimile (216) 696-8731